

Message Text

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TO AMEMBASSY BERN PRIORITY

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E.O. 11652: N/A

TAGS: EGEN, SZ

SUBJECT: FTC INVESTIGATION OF NESTLE

REF: BERN 5192, 12/28/73

1. DEPARTMENT HAS DISCUSSED NESTLE INVESTIGATION WITH FTC, EMPHASIZING EMBASSY CONCERNS OUTLINED REFTEL. DEPARTMENT PARTICULARLY STRESSED NEED EXPRESSED PARA 2 REFTEL TO DEFINE "IMPORTANT QUESTIONS" AND SPECIFY ADDITIONAL DOCUMENTATION REQUIRED. FTC OFFICIALS HAVE HAD NUMEROUS PRODUCTIVE DISCUSSIONS WITH WASHINGTON COUNSEL FOR NESTLE CONCERNING SUBSTANCE AND FORM OF MATERIALS REQUESTED. ACCORDING FTC STAFF, LATEST SUCH MEETING (JANUARY 16) RESULTED IN FULL AGREEMENT AS TO INFORMATION WHICH WASHINGTON COUNSEL FOR NESTLE WILL SUBMIT.

2. ASSUMING EARLY COMPLIANCE BY WASHINGTON COUNSEL, FTC STAFF EXPECTS QTE TO MAKE RECOMMENDATION IN EARLY 1974 CONCERNING RESOLUTION OF THE CASE. UNQTE FTC STAFF NOT PREPARED TO SPECULATE AS TO NATURE OF THE RECOMMENDATION.

3. FTC SOURCES EXPLAINED RECENT DEVELOPMENTS AS FOLLOWS:

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(A) ON NOVEMBER 15, 1973, WASHINGTON COUNSEL FOR NESTLE SUBMITTED A LENGTHY MEMORANDUM TO FTC BUREAU OF COMPETITION ADDRESSING RELEVANT FACTUAL AND LEGAL ISSUES. ON NOV. 29,

BUREAU OF COMPETITION REPLIED TO WASHINGTON COUNSEL REQUESTING SUPPLEMENTARY INFORMATION TO SUPPORT STATEMENTS MADE IN THE MEMORANDUM AND OTHER MATERIALS. FTC REQUESTED THAT THE QUESTIONS BE RESPONDED TO WITHIN 30 DAYS OF RECEIPT OF THE LETTER, ESPECIALLY IN LIGHT OF NESTLE COUNSEL'S INTEREST, SHARED BY FTC STAFF, IN COMPLETING INVESTIGATION AS SOON AS POSSIBLE. WASHINGTON COUNSEL IS NOW WORKING ON RESPONSE TO FTC REQUEST.

(B) ON DECEMBER 14, NESTLE/VEVEY WROTE DIRECTLY TO FTC ASSISTANT DIRECTOR, APPARENTLY WITHOUT THE ADVICE OF WASHINGTON COUNSEL, EXPRESSING SURPRISE AND PROFOUND DISAPPOINTMENT WITH FTC LETTER OF NOVEMBER 29. THE NESTLE/VEVEY LETTER SUGGESTED THAT FTC STAFF WAS SKEPTICAL AS TO THE COMPLETENESS OF NESTLE'S SUBMISSIONS AND STATED THAT NESTLE DOES NOT FULLY UNDERSTAND THE RELEVANCE OF THE FTC INQUIRIES. THE LETTER CONCLUDED WITH THE IMPLICIT SUGGESTION THAT NESTLE IS BEING DISCRIMINATED AGAINST BY FTC STAFF BECAUSE IT IS A FOREIGN COMPANY.

(C) SUBSEQUENTLY FTC ASSISTANT DIRECTOR WROTE TO WASHINGTON COUNSEL BY WAY OF RESPONSE TO NESTLE/VEVEY'S DECEMBER 14 LETTER. ASSISTANT DIRECTOR POINTED OUT THAT NOTHING IN FTC'S NOVEMBER 29 LETTER SHOULD BE TAKEN AS QUESTIONING THE INTEGRITY AND GOOD FAITH OF NESTLE IN RESPONDING TO THE FTC INQUIRIES. HE STATED QTE ON THE CONTRARY, WE HAVE BEEN IMPRESSED WITH THE GREAT EFFORT WHICH HAS BEEN EXPENDED TO PREPARE NESTLE'S SUBMISSIONS AND ARE GRATEFUL FOR THE COOPERATION WHICH HAS CHARACTERIZED ITS RESPONSE TO THESE INVESTIGATIONS. END QUOTE ASSISTANT DIRECTOR ALSO HOPED THAT THE CONCERNS EXPRESSED IN THE NESTLE LETTER ARE NOT SERIOUS ONES. FTC OFFICIALS EMPHASIZE THAT NESTLE IS RECEIVING NO SPECIAL TREATMENT (I.E., UNUSUAL OR DISCRIMINATORY TREATMENT) BECAUSE IT IS A FOREIGN FIRM. RATHER, FTC INSISTS IT IS APPLYING SAME SECTION 7 CLAYTON ACT CRITERIA TO THESE ACQUISITIONS UNCLASSIFIED

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AS WOULD BE THE CASE IN A DOMESTIC ACQUISITION, WITH THE BASIC QUESTION BEING: "WHAT IS THE EFFECT ON THE RELEVANT DOMESTIC MARKET?"

4. CONCERNING QUESTION IN PARA 3 REFTL, THE ISSUE IS WHETHER NESTLE ACQUISITION OF LIBBY AND/OR STOUFFER VIOLATES SECTION 7 OF CLAYTON ACT. THIS ISSUE IS INDEPENDENT OF BROAD ECONOMIC QUESTIONS RE STRUCTURE OF

U.S. GROCERY INDUSTRY.

5. DEPARTMENT WILL FOLLOW THIS MATTER CLOSELY AND
CONTINUE TO URGE EXPEDITIOUS HANDLING BY FTC. KISSINGER

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Decaption Note:
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Disposition Approved on Date:
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Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Document Unique ID: 00
Drafter: RJBUSHNELL:VJW
Enclosure: n/a
Executive Order: N/A
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